To the HONORABLE Societies of GRAY'S-*Inne*, and of the reſt of the Innes of Court, and to all the Profeſſors of the LAW.

I Have now ſpent forty five yeares in the Study of the Lawes of this Land being my profeſſion, under and by the conduct of which Lawes this commonwealth hath flouriſhed for ſome ages paſt in greate ſplendor and happineſſe (jam ſeges eſt ubi Troja fuit) *The great and full body of this Kingdome hath of late yeares fallen into an extreame ſickneſſe, it is truly ſaid that the cauſe of the diſeaſe being known, the diſeaſe is eaſily cured. There is none of you I hope, but doth heartily wiſh the recovery of our common parent, our native country* (Moribus antiquis ſtat res Brittannica) *I call God to witnes that this diſcourſe of mine hath no other end then my wiſhes of the common good: How farr I have been from Ambition, my life paſt, and your own knowledge of me, can abundantly informe you, and many of you well know, that I ever deteſted the Shippe-mony, and Monopolies, and that in the beginning of this Parliament, for oppoſing the exceſſes of one of the Biſhoppes, I lay under three Excommunications and the Examination of ſeaventy ſeven Articles in the high Commiſſion Court. His ſacred Majeſtie: (God is my witneſſe) made me a Iudge in the parts of Wales againſt my will, and all the meanes I was able to make; and*

a patent for my place was sent me for the which I have not paid one farthing, and the place is of so inconsiderable a benefit that it is worth but 80. l. per annum when paid, and it cost me every yeare I served twice as much out of mine own estate in the way of an ordinary and frugall expence. That which gave me comfort was that I knew well that his Majestie was a just and a prudent Prince.

In the time of the Attournyships of Master Noye and the Lord Banks, they were pleased to make often use of me, & many references concerning suits at Court upon that occasion came to my knowledg, & as I shall answer to God upon my last accompt this is a truth, that all or most of the references which I have seen in that kind (& I have seen many) were to this effect, That his majestie would be informed by his Counsell if the suits preferred were agreable to the Lawes, and not inconvenient to his people, before he would passe them. (what could a just and pious Prince do more?) Gentlemen: you shall finde the Cause and the Curse of the present great distemper in this discourse, and God prosper it in your hands, thoughts, and words, as the Case deserves.

Hold to the Lawes, this great body recovers: forsake them, it will certainly perish. I have resolved to tender my selfe a Sacrifice for them as Cheerefully, and I hope (by Gods assistance) as constantly as old Eleazer did for the holy Lawes of his Nation.

Your well-wisher

DAVID JENKINS.

Now Prisoner in the Tower.

Lex

Lex Terræ. 1647.

THE Law of this Land hath three grounds. First *Customs*. Secondly *Judicial Records*. Thirdly *Acts* of *Parliament*. The two latter are but declarations of the *Common-Lawe* and *Customs* of the Realme, touching *Royall-Government*. And this Law of *Royall-Government*, is a *Law-Fundamentall*.

The Government of this Kingdome by a *Royall Soveraign*, hath beene as ancient as Hiſtory is, or the memorie all of any time; what power this *Soveraignty* alwaies had and uſed in Warre and Peace in this Land, is the ſcope of this diſcourſe: That *Uſage* ſo practiſed makes therein a *Fundamentall Lawe*, and the *Common-Lawe* of the Land is common *Uſage*, *Plowdens Commentaries*. 195.

The kings prerogative is a principall part of the common Lawe. *Com. Litil.* 344.

For the firſt of our kings ſithence the Norman Conqueſt, the firſt *William*, ſecond *William*, *Henry* the firſt, *Stephen*, *Henry* the ſecond and *Richard* the firſt, the Cuſtomes of the Realme, touching *Royall Government*, were never queſtioned: The ſaid Kings enjoyed them in a full meaſure. In king *Johns* time the Nobles and Commons of the Realm conceiving that the ancient Cuſtomes and Rights were violated, and thereuppon preſſing the ſaid King to allowe them in the ſeventeenth of King *John*, the ſaid Liberties were by King *John* allowed, and by his ſonne *Henry* the thyrd, after in the ninth yeere of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foreſta*, declared foure hundred twenty two yeeres ſithhence by the ſaid Charters.

Now reſts to be conſidered, after the Subjects had obtained their Rights and Liberties, which were no other

then their ancient Customes (and the fundamentall Rights of the King as *Soveraigne* are no other.) How the Rights of *Soveraignty* continued in practise from *Henry* the thirds time untill this present Parliament of the third of November 1640. for before *Henry* the thirds time, the *Soveraignty* had a very full Power.

Hen. 3: Bracton temps H-3. lib. 4. cap. 24. Sect. 1.

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea quæ sunt jurisdictionis & Pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat; This proves where the supreme power is.

A Delinquent is hee who adheres to the Kings Enemies *Com. Sur. Littl.* 261. This shewes who are Delinquents.

Sect. 5. Bract. ibid.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo. This shewes where the supreme power is.

Bracton lib. 5. tract. 3. de dejaltis Cap. 3. Bracton. Lib. 3. Cap, 7.

Rex non habet superiorem nisi Deum, satis habet ad pœnam quod Deum expectat ultorem. This shewes where the supreme power is.

Treasons, Fellonies, and other Pleas of the Crowne, are *propria causa Regis.* This shewes the same power.

By these passages it doth appeare what the Custome was for the power of *Soveraignty* before that time; the power of the Militia, of coyning of Money, of making Leagues with forreigne Princes, the power of Pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

Edw. 1.

Sexto Ed. 1. Com. Sur. Littl. 85. Liege Homage, every Subject owes to the King (*viz*) Faith *de Membro, de vita, de terreno Honore*, the forme of the Oath *inter vetera statuta* is set downe; We reade of no such, or any Homage made to the two Houses, but frequently of such made by them.

7. Ed. 1. statuts at large fol 42.

It is declared by the Prelates, Earles, Barrons and Commonalty of the Realme, that it belongeth to the King and his Royall Segniory, straitly to defend force of Armour and

all

all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary, according to the Lawe and Usage of the Realme, and hereunto they are bound to ayde their Soveraigne Lord, at all seasons when neede shall be. Here the supreame power in the time of Parliament, by both Houses, is declared to belong to the King.

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in London, Westminster, or the Suburbs. This condemnes the multitudes coming to Westminster, and the Guards of armed men. 7 Ed. 2. 4 part inst. 14.

All who held by Knights service, and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda*, This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November 1640. The King, out of his Grace, discharged this duty, which proves that the power of warre and preparation thereto, belongs not to the two houses, but only to the King. 1 Ed 2. de Militibus.

The two *Spencers* in *Ed.* 2. time, hatched (to cover their Treason) this damnable and damned opinion (*viz.*) That Ligeance was more by reason of the Kings politique capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crowne, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suite of Lawe, it was to be done by force. Thirdly, that his Lieges be bound to governe in default of him. *Ed.* 3. *Calvins* Case *Cook l.* 7. *fol.* 11

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in *Ed.* 2. time; the other by 1. *Ed.* 3. *cap.* 2. All which Articles against the *Spencers* are confirmed by this last Statute, the Articles are extant in the booke called *vetera Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execreble

crable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two Houses found their Cause.

Plowdon Com. 312. 27. ass. pl. 49. The Villeine of a Lord, in the presence of the King, cannot be seized, for the presence of the King is a protection for that time to him: This shewes what reverence the Lawe gives to the person of a King.

33 Ed. 3. tyde de Roy. 103. Fitz. *Reges, sacro oleo uncti sunt capaces spiritualis jurisdictionis.* But the two Houses were never held capable of that power.

10 H. 7. 16. *Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spiritualem jurisdictionem.* This shewes the Kings power in Ecclesiasticall Causes.

Com. Sur. Littl. Sect. 4. The Lands of the King are called in Law, *patrimonium sacrum.* The Houses should not have medled with that sacred Patrimony.

3 Ed. 3. 19. The King hath no Peere in his Land, and cannot be judged: *ergo* The two Houses are not above him.

The Parliament of 15. *Ed.* 3. was repealed, for that it was against the Kings Lawes and Prerogative. *4 pars. instit. fol.* 52. This shewes cleerely the Propositions sent to Newcastle, ought not to have beene presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

4 pars Cookes instit. fol. 14. 42 E 3. Parliament Roll: num: 7: Lex & consuetudo Parliamenti. The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherison of the King and his Crowne, to which they are sworne. This condemnes the said Propositions likewise.

25 Ed. 3. cap. 2 To depose the King, to imprison him untill he assent to certaine demands, A warre to alter the Religion established by Lawe, or any other Lawe, or to remove Councellors, to hold a Castle or Fort against the King; are offences against that Lawe declared to be Treason by the resolutions herein after mentioned, by that Law men are bound to ayd the King when warre is levied against him in his Realme. King, in this Statute must be intended in his naturall body and

and person that only can die; for to compasse his death, and declare it by overt Act is declared thereby Treason, To incounter in fight such as come to ayde the King in his warres, is Treason.

Compassing of the Queenes death, of the Kings eldest sonne, to coyne his money, to counterfet his Great-Seale, to levie warre against him, to adhere to such as shall so do, are declared by that Act to be high Treason. This Statute cannot referre to the King in his politique capacitie, but to his naturall, which is inseparable from the politique, for a body politique can have neither wife nor childe, nor levy warre, nor doe any act but by the operation of the naturall body: A Corporation or body politique hath no soule or life, but is a fiction of the Lawe, and the Statute meant not fictitious persons, but the body naturall, conjoyned with the publique, which are inseparable. 21 Ed 4 14.

The clause in that Act, that no man should sue for grace or pardon for any offence condemned, or forfeiture given by that Act, was repealed by a subsequent Act in 21. R. 2. holden unreasonable, without example and against the Law and custome of the Parliament. This condemnes the proposition for disabling the King to Pardon. 4. *pars instit. fol.* 42. The Act of 11. R. 2. so much urged by the other side, was an Act to the which the King consented, and so a perfect Act: yet Note the Army then about the Town: Note that that Law is against private persons, and by the 3. *cap.* thereof, the Treasons there declared, are declared to be new Treasons made by that Act, and not to be drawne to example. it was abrogated 21. R. 2. and revived by an usurper 1. H. 4. to please the people, and by the tenth chap. thereof enacts that nothing shall bee Treason but what is declared by 25. Ed. 3, R. 2. 11 anno cap. 13 4 pars instit. fol. 42 15 R. 2. cap. 5.

The Regality of the Crowne of England is immediatly subject to God and to none other. Plaine words, shewing where the supreme power is. H. 4

The Commission of Array is in force and no other Commission

miſſion *Rot. Parlm.* 5. *H.*4. *numb.*24. an Act not printed, this Act was repealed by 4 & 5. *P. & M. cap.*2. this repealed by the Act of 1. *Jacobi* and ſo it is of force at this day, for the repealing Statute is repealed, 4. *pars inſtitu. fol.* 51. & 125. publiſhed ſithence this Parliament, by the deſire of the houſe of Commons, their Order is printed in the laſt leafe of the Commentaries upon *Magna Charta.*

A booke alowed by Syr *Nat Brent*, called the reaſon of the war: *fol* 95

Syr *Edward Cooke*, by their party is holden for the Oracle of the Law, who wrote the ſaid fourth part, in a calme and quiet time, and I may ſay, when there was no neede to defend the authority of the Commiſſion of Array.

For that objection, That that Commiſſion leaves power to the Commiſſioners to taxe men *ſecundum facultates*, and ſo make all mens eſtates Arbitrary: the anſwere is That in levying of publique aydes upon mens goods and eſtates, which are varjable, and probably cannot be certainly knowne by any but the owners, it is impoſſible to avoide diſcretion in the aſſeſſments, for ſo it ever was, and ever will be. By this appeares that the votes of the two houſes againſt the Commiſſion of Array, were againſt the Law.

H. 5:

The death of the King diſſolves the Parliament, if Kings ſhould refer to the politique capacity it would continue after his death, 4. *pars Inſt.* 46. which proves that the King connot be ſaid to be there when he is abſent, as now he is:

2 *H.*5. 4 *pars inſtit.* 46

there is no *interregnum* in the kingdome the diſſolution of the Parliament by his death ſhewes that the beginning and end thereof refers to the naturall perſon of the King and therefore he may lawfully refuſe the Propoſitions

2. *H.* 5. *Chap.*6. to the King onely it belongs to make Leagues with forreigne Princes; This ſhewes where the ſupreame power is.

*H.*6.

8. *H.* 6. *numb.* 57. *Rott. Parl. Cookes* 4. *pars inſtit.* 25. No priviledg of Parliament. is grantable for Treaſon Felony or Breach of the peace; if not to any one member, nnot to two, not to ten, not to the Major part, 19. *H.* 6. 62. The law is the inherritanc of the King and his peo-

King

ple by which they are ruled, King and people; And the people are by the law bound to ayde the king, And the King hath an inheritance to hold Parliaments and in the ayds granted by the Commonalty. If the major part of a Parliament commit Trason they must not bee Judges of it, for no man or body, can be Judge in his own cause, and aswell as ten or any number may commit treason, the greater number may aswell.

The King by his letters pattents may constitute a County palatine and grant Regall rights, this shewes where the supreme power is. 31. *H.6.* 13. *Plowd.* 334.

17. *Ed.* 4. *rot. parl. numb.* 39. No priviledge of Parliament is grantable for Treason, Fellony or Breach of the peace, if not for one, not for two or more, or a major part. *Ed.* 4.

The same persons must not be Judge and party. A corporat body can commit no treason, nor can treason be committed against a corporate body, 21. E. 4, 13. and 14. but the persons of the men who make that body may commmit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soul, no life, and subsists only by the fiction of the Law, and for that reason the Law doth conclude as aforesaid; therefore the stature of 25. E. 3, must be intended of the Kings naturall person conjoyned with the politique which are inseparable and the Kings naturall person being at Holmby, his politique is there also, and not at Westminster; for the politique and naturall make one body indivisible *calvins* Case 7 *part. fol.* 11. 12. *Plow. com.* 213.

If all the people of England should breake the league made with a forreigne Prince, without the Kings consent, the league holds and is not broken, and therefore the representative body is inferior to his Majesties. 19 *Ed.* 4. 6.

The King may erect a Court of Common pleas in what part of the kingdome he pleaseth by his letters pattents, can the two howses do the like? 22 *Ed.* 4. *Fitz. jurisdiction* 5 *placite.*

Ed.5. 1. *Ed.* 5. *fol.* 2. It cannot be ſaid that the King doth
4 *Ed.4.25.* wrong, declared by all the Judges and *Serjeants* at law
5 *Ed.4 29.* then there.

The reaſon is, nothing can be done in this Commonwealth by the Kings grant or any other act of his, as to the ſubjects perſons, goods, lands or liberties, but muſt be according to eſtabliſhed lawes, which the Judges are ſworne to obſerve and deliver between the King and his people impartially to rich and poore, high and low; and therefore the Juſtices and the Miniſters of Juſtice are to be queſtioned and puniſhed if the Lawes be violated: And no reflection to be made on the King. All Counſellers and Judges for a yeare and three months nntill the tumults began this Parliament were all left to the ordinary courſe of Juſtice, what hath beene done ſithence is notorious.

R.3. For great Cauſes and conſiderations an act of Parlia-
1 *R.3.cap.35.* ment was made for the ſurety of the ſaid Kings perſon; if a Parliament were ſo tender of King *Rich.* the 3. the howſes have greater reaſon to care for the preſervation of his Majeſtie.

H.7: The Subjects are bound by their allegiance to ſerve the
11 *H.7.cap.1.* King for the time being againſt every Rebellion, power and might, reared againſt him within this land, that it is againſt all lawes, reaſon and good conſcience, if the King ſhould happen to be vanquiſhed, that for the ſaid deede and true duty and alligeance they ſhould ſuffer in any thing, it is ordeined they ſhould not: and all acts of proceſſe of law hereafter to be made to the contrary are to be void, This law is to be underſtood of the naturall perſon of the King, for his politique capacity cannot be vanquiſhed; nor war reared againſt it.

Relapſers are to have no benefit of this Act.

12 *H.7.20.* It is no ſtatute, if the King aſſent not to it, and he may
H.8. diſaſſent, this proves the negative voice.
24 *H.8.cap.12.*
25 *H.8.cap.21* The King hath full power in all cauſes to doe juſtice to all men this is affirmed of the King, and not of the two Houſes,

The

The commons in Parliament acknowledg no superior to the King under God, the house of Commons confesse the king to be above the representative body of the Realme.

Of good right and equity the whole and sole power of pardoning treasons, fellonies &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the peace &c. This law condemns the practise of both houses at this time. 27 H.8.cap 24. Nott.

The Kings royall assent to any act of Parliament signed with his hand expressed in his letters Patents under the great Seale, and declared to the Lords and Commons shall be as effectuall as if hee assented in his owne person; a vaine act if the King be virtually in the houses. 33.H.8 cap.21

The King is the head of the Parliament, the Lords the principall members of the body, the Commons the inferior members, and so the body is composed, therefore there is no more Parliament without a King, then there is a body without a head. Dier 38.H.8.fo 59.60.

There is a corporation by the Common law, as the King, Lords, and Commons, are a a corporation in Parliament, and therefore they are no body with out the King. 14 H. 8. fol.3.

The death of the King dischargeth all mainprise to appeare in any Court or to keepe the peace. 24 Ed.3:48. 1 Ed.4.2.

The death of the King discontinues all pleas by the common law which agreeth not with the virtuall power insisted upon now. 2 H.4.8. 1 H.7.10. 1 Ed.5.1.

Writs are discontinued by the death of the King; Patents of Judges, Commission for Justice of the peace. Sheriffs Escheators, determined by his death; where is the virtuall power? Ed.6. 1 Ed.6.cap.7.

All authority and jurisdictions spirituall and temporall is derived from the King; therefore none from the houses. 1 Ed.6. cap.2.

His Majesties subjects, according to their bounden duties, ought to serve the King in his warres, of this side or beyond the seas; beyond the seas is to be understood for wages; This proves the power of warres and prepara- 2.3 Ed.6.cap.2 11 H.7. cap.1. Calvins Case. 5a.part Coke.

tion for warre to be in the King.

5.6 Ed.cap.11. It is most necessary both for common policy and duty of the Subjects, to restraine all manner of shamefull slaunders against their King, which when they be heard, cannot but be odible to his true and loving Subjects, upon whom dependeth the whole unity and universall weale of the realm. This condemnes their continuing of the weekly pamphlets who have beene so foule mouthed against his Majesty.

2. Mary. The punishment of all offenders against the Lawes, belongs to the King, and all jurisdictions doe, and of right
1 Mar.Pl.2.2 ought to belong to the King. This leaves all to his Majesty.

4.5 P.&M.c.3 All Commissions to levy men for the warre, are awar-
2. Eliz. ded by the King. The power of warre only belongs to the
10 Eliz.Pl.315 King.

It belongs to the King to defend his people, and to provide Armes and force. No speech of the two houses.

Roy ad sole government de ses subjects. Corps naturall le
Plow.234.242 *Roy & politique sont un corps*, that is, The King hath the
213. Calvins sole government of his Subjects, the body politique and
Case 7. pars the naturall body of the King make one body, and not di-
fol.12. vers, and are inseparable and indivisible.
Plow.com.213.

The body naturall and politique make one body, and are
Plow.934.243 not to be severed: Ligeance is due to the naturall body,
213. Calvins and is due by nature; Gods Law, and mans law, cannot
Case 7 pars fo. be forfeited nor renounced by any meanes, it is inseparable
12. from the person.

1 Eliz. cap. 1. Every Member of the House of Commons, at every Par-
5 Eliz. cap.1. liament, takes a corporall Oath, That the King is the su-
Cawdries Case preme and only Governour, in all Causes, in all his Do-
5 pars fol.1. minions, otherwise he is no member of that House; the words of the Law are, In all Causes, over all persons.

The said Act of 1. *Eliz.* is but declarative of the ancient
43 Eliz. Lawe, *Cawdries* Case *ibid.*
3 pars instit.fo. The Earle of Essex, and others, assembled multitudes of
12. men to remove Councellors, adjudged Treason by all the Judges of England.

To

To depose the King or take him by force, to imprison him untill he hath yeelded to certain demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams* Case. 39 *Eliz.* *Hil.* 1 *Jacobi* *ibid.*

Arising to alter Religion established, or any Lawe, is Treason; so for taking of the Kings Castles, Forts, Ports or shipping. *Brooke* treason 24. 3.&4. *Philip* and *Mary*, *Dyer*, *Staffords* Case concerning Scarborough. 39 *Ed. Bradf.* Case *fol.* 9 & 10. By all the Judges of England, *ibid.*

The Lawe makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert Order and Measure. 10 *Eliz. Plow.* 316,

The Lawe is not knowne but by Usige, and Usage proves the Law, and how Usage hath beene is notoriously knowne 10 *Eliz. Plow.* 319.

The King is our only Rightfull and Lawfull Liege Lord and Soveraigne, Wee doe upon the knees of our hearts agnize constant Faith, Loyalty and Obedience to the King and his Royall progeny, in this high Court of Parliament, where all the body of the Realme is eyther in person or by representation: We doe acknowledge that the true and sincere Religion of the Church, is continued and established by the King, And do recognize, as we are bound by the Law of God and Man, the Realm of England and Imperiall Crowne thereof doth belong to him by inherent byrthright, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule; and beseech the King to accept the same as the first fruits of our Loyalty and Faith to his Majesty and his Posterity for ever, and for that this Act is not compleate nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crowne by the two Houses, but by inherent byrth-right, and that there can be no Statute without his expresse assent, and destroyes the chymera of the Kings virtuall being in the Houses. K. *James* 1 *Jaco. cap.* 1. 9 *Ed.* 4. *fol.* 8.

3 *Jac. cap.* 4. 13 *Eliz. cap.* 1. To promiſe obedience to the Pope, or any other State, Prince or Potentate, other then the King his Heires and Succeſſors, is Treaſon; And therfore thoſe perſons who call the Houſes the Eſtates offend this Lawe.

K. Charles Collection of Ordinances *fo.* 727. 1 *pgrs. ibid. fol.* 728. Such Bills as his Majeſty is bound in Conſcience and Juſtice to paſſe, are no Lawe without his aſſent.

To deſigne the ruine of the kings perſon, or of Monarchy is a monſtrous and injurious charge.

ibid. fol. 865. *Ubi Lex non diſtinguit, non eſt diſtinguendum*, all the aforeſaid Acts and Lawes doe evidently prove the Militia to belong to the King: that the King is not virtually in the two houſes: that the King is not conſiderable ſeparately in relation to his politique capacity: that the King is not a perſon truſted with a power, but that it is his inherent byrth-right, from God, nature and lawe, and that he hath not his power from the people: Theſe Lawes have none of thoſe diſtinctions of naturall and politique, *abſtractum & concretum*, power and perſon, in *Caſars* time this Iſland had Kings, and ever ſince, which is almoſt 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdome by the people: A Parliament never made King, for they were Kings before, the Parliaments are ſummoned by the Kings Writts, which for Knights Citizens and Burgeſſes begins thus, *viz.*

Rex vic. Wilts. Salutem. Quia Nos de aviſamento & aſſenſu Conſilij nri. pro quibuſd. arduis & urgentibus negotiis nos ſtatum & defenſionem Regni nri. Angl. & Eccleſia Anglicana concernentibus quoddam Parliamentum nrum. apud B. teneri ordinavimus & ibid. cum Prelatis magnatibus & proceribus dicti Regni nri. Colloquium habere & tractatum, ipſi vicecomiti preſcipimus firmiter injungendo quod facta Proclamatione in proximo Comitatu tuo poſt receptionem ejuſd. brevis, duos Milites gladiis cinctos, &c. eligi faciat ad faciendum & conſentiendum his quæ tunc ibidem de Communi Concilio nro. Anglia faventi Deo contigerit ordinari ſuper nego-

negotiis antedictis ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Militum, Civium, & Burgensium pred. dicta negotia nra. infecta non remanerent.

The King is *Principium, Caput & finis Parliamenti*, the body makes not the head, nor that which is *posterior* that which is *prior*: *Concilium non est Preceptum, Conciliarij non sunt Preceptores*, for Councell to compell a consent, hath not beene heard of to this time in any age, and the house of Commons, by the Writt, are not called ad *Concilium*; the Writts to the twelve Judges, Kings Councell, twelve Masters of the Chancery are *Concilium impensuri*, and so of the Peeres. The Writts for the Cominalty, *Ad faciendum & consentiendum*. Which shewes what power the representative body hath, they have not power to give an oath, neither doe they claime it. 4 *part instit. fol.* 3 & 4.

The King at all times, when there is no Parliament, & in Parliament is assisted with the advice of the Judges of the Lawe, twelve in number, for England at least hath two Sergeants when fewest: an Attorney and Sollicitor, twelve Masters of the Chancery, his Councell of State, consisting of some great Prelates and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwaies of great substance, which is not preserved but by the keeping of the Lawe, The Prelates versed in divine Lawe, the other Grandees in affaires of State and managery of Government, The Judges, Kings Sergeants, Attorney, Sollicitor, and Masters of the Chancery versed in the Lawe and Customes of the Realme: All sworne to serve the King and his people justly and truly, the King is also sworne to observe the Lawes, and the Judges have in their Oath a clause, That they shall doe common right to all the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the Great Seale or otherwise, The people are safe by the Lawes in force

The Oath of the Justices 18 of *Ed.* 3. among Statutes of that yeere.

force without any new: The Lawe finding the King of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Graunts in his Minoritie, (there are many great persons living hold many a thousand pownd a yeere by Patents from *Edward* the sixth, passed when hee was but ten yeeres of age) not to bee bound to any Lawe to his prejudice, whereby he doth not binde himselfe, power of warre and peace, coyning of Money, making all Officers, &c. The Lawe, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all kings have enjoyed them till 3. *Nov.* 1640.

It will bee said notwithstanding all this fence about the Lawes, the Lawes have beene violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answere to this is evident: There is no time past, nor time present, nor will there bee time to come, so long as men mannage the Lawe, but the Lawes will bee broken more or lesse, as appeares by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. *Jan.* 1641, being then driven away by Tumults. And the Houses for a yeere and almost three Moneths: From 3. *Nov.* 1640. to 10 *Jan.* 1641. as aforesaid, being a yeere and almost three moneths, had time and liberty to question all those persons who were eyther causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, What hath beene done this way? Both Houses in *Henry* the eights time tendred

dred to him a Bill to bee passed called commonly the Bill of the six Articles, this was conceived by them to bee a just and unceessary Bill: had not *Henry* the eighth done well to have refused the passing of this bill? both houses tendred a bill to him to take the reading of the Scriptures from most of the laity: had not King *Henry* the eight deserved much prayse to reject this bill? In Queene *Maryes* time both houses exhibited a bill to her to introduce the Popes power and the Roman religion; had not Queene *Mary* don well to have refused this bill? Many such instances may be given. The two Houses now at Westminster I am sure will not deny but the refusall of such bills had beene just, the King being assisted as aforesaid, and why not so in these times?

For the Civill Government what a Bill did both houses present to *Richard* the third to make good his title to the Crowne; had it not beene great honour to him to have rejected it? what bills were exhibited to *Henry* the eighth by both houses for bastardizing of his daughter *Elizabeth*, a Queene of renowned memory, to settle the Crowne of this Relme for default of issue of his body upon such persons as he should declare by his letters Patents or his last will, and many more of the like? had not this refusall of passing such bills magnified his vertue and rendred him to posterity in a different Character form what he now hath?

And by the experience of all times and the consideration of human frailty this conclusion is manifestly deduced, that it is not possible to keepe men at all times (be they the houses, or the King and his councell) but there will be sometimes some deviation from the lawes, and therefore the constant and certain powers fixed by the ancient law must not be made voide, and the Kings Ministers, the Laws do punish where the Law is transgressed, and they only ought to suffer for the same.

In this Parliament the houſes exhibited a bill to take away the ſuffrages of the Biſhops in the upper houſe of Parliament, and have ſithence agreed there ſhall be no more Biſhops at all, might not the King if he had ſo pleaſed have anſwered this bill with *Le Roy s'aviſera*, or *ne veult*: it was againſt *Magna Charta*; *Articuli Cleri* and many other acts of Parliament. And might have farther given theſe reaſons if it had ſo pleaſed him for the ſame: firſt that this Bill deſtroyes the writt whereby they are made two houſes of Parliament the King in the writt to the Lords being *Cum prælatis Colloquium habere*; ſecondly they have bene in all Parliaments ſince we had any, and voted, but in ſuch wherein they themſelves were concerned: And there have bene Biſhops here ſithence we were Chriſtians, and the fundamentall law of the kingdome approves of them: if any of them were conceived offenſive; they were left to juſtice, and his Majeſtie would put in in-offenſive men in their places: but ſithence his Majeſtie hath paſſed the Bill for taking away their votes in Parliament, it is a law that binds us ſo farr.

Upon the whole matter the law hath notably determined that Bills agreed by both houſes, pretended to be for the publique good, are to be judged by the King, for in all Kings reignes Bills have been preferred by both houſes, which allwayes are pretended to be for the publique good, and many times are not, and were rejected with *Roy s'aviſera* or *Roy ne veult*.

This Parliament begunne the third of *November* 1640 before that time in all the Kings reigne no armed power did force any of the people to do any thing againſt the law: what was done, was by his Judges, officers Referees and Miniſters from that time untill the tenth of *January* 1641 (when the King went from London to avoyd the danger of frequent tumults, being a yeare and three months, Privy Councellors and all his Juſtices and Miniſters.

ministers were left to the Justice of the law, there wanted no time to punish punishable men.

The Sphære of the house of commons is to represent the grievances of the Contrey, to grant aydes for the King upon all fit occasions extraordinary, to assent to the making or abrogating of lawes: The Orb of the house of Lords to Reforme eronious judgments given in the kings Bench, to redresse the delayes of Courts of Justice, to receive all petitions, to advise his Majestie with their councell, to have their votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meete,

Lex non cogit ad impossibilia, subjects are not to expect from Kings impossible things, so many Judges, Counsellors, Sheriffes, Justices of the peace, Commissioners, Ministers of State, that the King should over looke them all cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts: their charge is to administer the lawes in being, and not to delay, deferre or sell justice for any commandment of the King. Wee have Lawes enough *instrumenta boni seculi sunt boni viri*, good ministers, as judges and officers are many times wanting, the houses propose new Lawes, or abrogation of the old; both induce novelty: the law for the reasons aforesaid, makes the King the only judge, who is assisted therein by a great number of grave, learned and prudent men, as aforesaid.

For the considerations aforesaid the Kings party adhered to him, the law of the Land is their byrth-right, their guide, no offence is committed where that it is not violated: they found the commission of Array warranted by the law; they found the King in this Parliament to have quitted the Ship money, Knighthood-money, seven Courts of Justice, consented to a triennial Parliament, setled

the Forest bounds, tooke away the Clerke of the Market of the houshold, trusted the house with the Navie, passed an act not to dissolve this Parliament without the houses assent; no people in the world so free if they could have beene content with Lawes oathes and reason, and nothing more could or can be devised to secure us, neither hath beene in any time.

Notwithstanding all this we found the King driven from London by frequent tumults, that two thirds and more of the Lords had differted that house, for the same cause, and the greater part of the house of Commons left that house also for the same reason: new men chosen in their places, against law, by the pretended warrant of a counterfet Seale; & in the Kings name against his consent, levying warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction and the subversion of the law and land, laying taxes on the people never hard of before in this Land; devised new oathes to oppose forces raysed by the King, not to adhære to him, but to them in this warre which they call the Negative Oath, and the Vow and Covenant.

By severall wayes never used in this kingdome they have raised monies to foment this warre, and especially to inrich some among them, namely first Excise, secondly Contributions, thirdly Sequestrations, fourthly Fift Parts, fiftly Twentieth Parts, sixtly Meale-mony, seventhly Sale of Plundered goods, eightly Loanes, ninthly Benevolences, tenthly Collections upon their Fast-dayes, eleventhly new Inpositions upon Marchandizes, twelvethly Guards maintained upon the charge of private men, thirteenthly Fifty Subsidies at one time, fourtenthly Compositions with such as they call delinquents, fiftenthly Sale of Bishops lands &c.

From the Kings party meanes of assistance are taken;

before

before any indictment their Lands seised, their goods taken, the law allows a Traytor or Fellon attainted, *Necessaria sibi & familiæ suæ in victu & vestitu* where is the covenant? where is the petition of right? where is the liberty of the subject?

1 R. 3. cap. 3. Bract li. 3. c. 8. Stanford. 192. Sir Ger. Fleetwoods Case. 8. part Cook 7. H. 4. laste leafe.

Frst We have ayded the King in this warre contrary to the negative oath and other votes, Our warrant is the twenty fifth of *Edward* the third, the second Chapter, and the said resolutions of all the Judges.

Secondly Wee have maintained the Commission of Array by the Kings Command, contrary to their votes: We are waranted by the statute of the fifth of *Henry* the fourth and the judgment of Sir *Edward* Cooke, the Oracle of the Law as they call him.

Thirdly We maintained Arch-Bishops and Bishops whom they would suppresse. Our warrant is *Magna Charta* and many statutes more.

Fourthly We have maintained the booke of common prayer, they suppresse it, Our warrant is five Acts of Parliament in *Edward* the sixt and Queene *Elizabets* time 5. *Pascha.* 35. *Elizabeth inter placita Corona in Banco Regis*, New booke of Entries fol. 252. *Penry* for publishing two scandalous Libels against the Church government, was indicted arraigned attainted and executed at Tyburne.

Fifthly We maintained the Militia of the kingdom to belong to the King, they the contrary, Our warrant is the statute of the seventh of *Edward* the first and many statutes sithence, the practise of all times, and the custome of the Realm.

Sixthly We maintained the counterfeiting of the great Seale to be high Treason, and so of the usurpation of the Kings Forts, Ports, Shipping, Castles and his Revenue, and the Coyning of money, against them; Wee have our warrant by the said statute of the twenty fifth of *Edward* the

third, Chapter the ſecond and divers others ſince, and the practiſe of all times.

Sevenethly We maintayne that the King is the only ſupreme governer in all cauſes. They that his Majeſtie is to be governed by them, Our warrant is the ſtatutes of the firſt of Q. *Eliza.* Chapter the firſt, and the fifth of Q. *Elizabeth* Chapter the firſt.

Eighthly We maintayne that the King is King by an inhærent birth-right, by nature, by gods law, and by the law of the land, They ſay his Kingly right is an office upon truſt, Our warrant is the ſtatute of the firſt of king *James*, Chapter the firſt. And the reſolution of all the Judges of England in *Calvins* caſe.

9 Ed. 4. fol. 4.

Nynthly We maintain that the politique capacity is not to be ſevered from the natural. They hold the contrary: Our warrant is two ſtatutes (*viz.*) *Exilium Hugonis* in *Edward* the ſeconds time, and the firſt of *Edward* the third, Chapter the ſecond, and their Oracle who hath publiſhed it to poſterity, that it is damnable, deteſtable and execrable treaſon, *Calvins* Caſe *pars* 7 *fol.* 11.

Tenthly We maintaine that who aydes the King at home or abroade ought not to be moleſted or queſtioned for the ſame, They hold and practiſe the contrary. Our warrant is the ſtatute of the eleventh of *Henry* the ſeventh, Chapter the firſt.

Eleventhly We maintayne that the King hath power to diſaſſent to any Bill agreed by the two houſes; which they deny. Our warrant is the ſtatute of the ſecond of *Henry* the fift, and the practiſe of all times, the firſt of King *Charles*, Chapter the ſeventh, the firſt of King *James* Chapter the firſt.

Twelfthly We maintayne that Parliaments ought to be holden in a grave and peaceable manner, without tumults They allowed multitudes of the meaner ſort of people to come to Weſtminſter to cry for Juſtice when they could

Coll. of Ord. fol. 31.

not

not have their will, and keepe guards of armed men to waite upon them. Our warrant is the statute of the seventh of *Edward* the second and their Oracle.

Thirteenthly We maintaine that there is no state within this kingdome but the Kings Majesty, and that to adhære to any other state within this kingdome is high Treason. Our warrant is the statute of the third of King *James* Chapter the fourth, and the twentie third of Q. *Eliza.* Chapter the first.

Fourteenthly We maintayne that to leavy a warre to remove Councellours, to alter Religion, or any Law established, is high treason, They hold the contrary. Our warrant is, the resolutions of all the Judges of England in Quene *Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly We maintaine that no men should be imprisoned, put out of his lands, but by due course of Law, and that no man ought to be adjudged to death but by the law established, the customes of the Realm, or by Act of Parliament; Th y practise the contrary in Lond n, Bristoll, K nt &c. Our warrant is *Magna Charta* Chapter the twenty ninth, the *Petition of right.* the third of King *Charles*, and divers lawes there mentioned.

We of the Kings party did and do detest Monopolies, and sh p money, and all the grievances of the people as much as any men living, we do well know that our estates lives and fourtunes are preserved by the lawes, and that the King is bound by his lawes, we love Parliaments If the Kings, Judges, counsell or ministers have done a misse, they had from the third of *November* 1640 to the tenth of *January* 1641, time to punish them, being all left to Justice; Where is the Kings fault?

The Law saith the King can do no wrong, that he is *medicus regni*, *pater patriæ*, *sponsus regni*, *qui per annulum* is espoused to his Realme at his Coronation; the King

11 *pars. Cookes Reports. Magdalen Colledge* is Case

is Gods Lieutenant, and is not able to doe an unjust thing, These are the words of the law.

One great matter is pretended that the people are not sure to enjoy the acts passed this Parliament, A succeeding Parliament may repeale them ; The objection is very weake, a Parliament succeeding to that may repeale that repealing Parliament. That feare is endlesse and remediless, for it is the essence of Parliaments being compleate and as they ought to be, of head and all the members, to have power over Parliaments before; Parliaments are as the time are; if a turbulent faction prevailes; the Parliaments are wicked, as appeares by the examples recited before of extreame wicked Parliaments: if the times be sober and modest, prudent and not byassed, The Parliaments are right, good and honorable, and they are good Medicines and salves, but in this Parliament *excessit medicinæ modum.*

In this cause and warre betweene the Kings Majesty and the two houses at Westminster, what guide had the subjects of the land to direct them but the Lawes? What meanes could they use to discerne what to follow, what to avoide but the Lawes? The King declares it Treason to adhere to the Houses in this warre: The Houses declare it Treason to adhere to the King in this Warre. The Subjects for a great and considerable part of them (treason being such a crime as forfets life and estate and also renders a mans posterity base beggerly and infamous) looke upon the Lawes, and finde the letter of the law requires them to assist the King, as before is manifested, was ever subject criminally punisht in any age or nation for his pursuit of what the letter of the Law commands?

The Subjects of the kingdome finde the distinction and interpretation now put upon the Lawes of *Abstractum & Concretum*, Power and Person, body politique, and natural

naturall, Perſonall preſence and virtuall, to have beene condemned by the law: And ſo the Kings party hath both the letter of the law and the interpretation of the letter cleared to their judgments, whereby they might evidently perceive what ſide to adhære to, what ſatisfaction could modeſt peaceable and loyall men more deſire?

A verbo legis in criminibus & pœnis non eſt recedendum, hath beene an approved maxime of law in all ages and times. If the King be King and remain in his Kingly office (as they call it) then all the ſaid lawes are againſt them without colour: they ſay the ſaid lawes relate to him in his office, they cannot ſay otherwiſe, Commiſſions and pardon in the Kings name, and the perſon of the King and his body politique cannot, nor ought to be ſevered as hath beene before declared: And the members of both houſes have ſworn conſtantly in this Parliament that the King is the only ſupreme Governour in all cauſes over all perſons at this preſent time. Coll of Ordinances 777. 5 *Eliz. cap.* 1. 1 *Eliz. cap.* 1.

For that of verball or perſonall commands of the King which is objected, We affirme few things to be ſubject thereto by the law: But his Majeſties Command under his great Seale, which in this warre hath beene uſed by the Kings command for his Commiſſion to leavy and array men, that is no perſonall command (which the law in ſome caſes diſallowes) but that is ſuch a command, ſo made, as all men hold their lands by, who hold by Patents; All corporations have their Charters which hold by Charters, and all Judges and officers their places and callings.

It is objected the King cannot ſuppreſſe his Courts of Juſtice, and that this warre tended to their ſuppreſſion. *Ob. Sol.*

The anſwer is the King cannot, nor ought to ſuppreſſe Juſtice or his Courts of Juſtice, nor ever did: But Courts of Juſtice by *abuſer or non uſer* ceaſe to be courts of Juſtice; when Judges are made and proceedings in thoſe courts holden 7 *pars* The Earle of Weſtmerlands Caſe. 1 *Eliz.* *Dier* 165. 7 *pars Cooke.*

holden by others then Judges made by the King, and against his command under the great Seale, and his Majestie is not obeyed, but the votes of the houses; they cease to be the Kings Courts and are become the Courts of the houses, and his Judges breaking that condition in law, of trust and loyalty, implied in their Patents, are no longer his Judges; they obey and exercise their places by virtue of writts and processes under a counterfet Seale. The King only can make Judges, the twenty seventh of *Henry* the eighth, Chapter the twenty fourth, *Justices of the Peace, &c.* twenty eighth of *Henry* the eighth *Dier* the eleventh, the Kings Patent makes Judges: The cheefe Justice of the Kings Bench is made by the Kings writt only of all the Judges.

The case of discontinuance of Processe.

Articuli super chartas cap. 5.

The great Seale is the key of the kingdome, and meete it is that the King should have the key of his kingdome about him; 2 *part instit* 552. which confutes their saying that the King got the Seale away surreptitiously.

Britton fol. 23.

The King, and he only, may remove his Courts from Westminster into some other place, at Yorke the Termes were kept for seven yeares, in *Edward* the first's time: but for the Court of Common pleas, the place must be certaine; for the Kings Bench and Chancery, the King by the law may command them to attend his person alwayes if it seeme so meete unto him: but the removing of the Common pleas must be to a place certaine, and so notified to the people.

34. *Assis. pl.* 24.
22 *Ed.* 4. *Fitz: jurisdiction last placit.*
6 *H.* 7. 9.
6 *Eliz. Dier* 226.

All the bookes of law in all times agree, that the King may grant counsance of all Pleas at his pleasure within any County or precinct to bee holden there only, and remove the Courts from Westminster to some other place (for the Common Pleas, the place must be certaine and so notified to the people) and adjourne the termes as hee sees cause. All which the two houses have violated. *Plebs sine lege ruit.*

Some

Some seeming objections of Master *Prinn's*, scattered in divers books, answered and the truth thereby more fully cleared.

The first of *Henry* the fourth reviveth the statute of the eleventh of *Richard* the second, and repeales to the twelfth of *Richard* the second, whereby certaine persons were declared traytors to the King and kingdome, being of the Kings party. 1 Ob.

True, but note, the eleventh of *Richard* the second, A Parliament beset with 40000 men, and the King assents to it, so an Act, and besides the first of *Henry* the fourth declares that the treasons mentioned in the act of the eleventh of *Richard* the second, being but against a few private men shall not be drawn into example, and that no Treason should be but such as the twenty fift of *Edward* the third declares. All these are Acts passed by the King and the three estates, not to be drawne into example in a tumultuous time, by a besieged Parliament, with an army, and the confirmer of *Henry* the fourth being an usurper makes that act of the first of *Henry* the fourth to secure himselfe. Also what is this to the votes of the two houses only at this time. Sol. 9 Ed. 4 fol. 80.

The Court of Parliament is above the King, for it may avoid his Charters Commissions &c. granted against the law. 2 Ob.

And the Law is above the King. Sol.

By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at westminster are above the King, for they make of no effect the Kings Charters, which are passed against the law: and the King is Subject to law, and sworne to maintaine it. Again it is no Parliament without the King, and the King is the head thereof, he is *principium Caput & finis* of a Parliament as *Medas tenendi Parliament.* hath it, and two houses only, want *principium Caput & finis* of a Parliament

ament and it is a sorry Parliament that wants all these. And therefore to say that Parliaments are above the King, is to say that the King is above himselfe.

3 Ob. The Parliament can enlarge the Kings prerogative, therefore it is above him.

Sol. If the King assent otherwise not, and then it is an act of Parliament and otherwise no Act.

4 Ob. *Bracton* saith God, the Law, and the Kings Court (*viz*) his Earles and Barrons are above the King. (*viz*) in Parliament, as Master *Prinne* expounds it,

Sol. Where is then the house of Commons? Indeed take God, the Law, and Earles and Barrons together it is true, but to affirme that the Earles and Barrons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferior member is above the head, is hard to conceive; besides that position destroyes all Master *Prinns* discourse, who attributes so much to the house of Commons.

5 Ob. The King is but one of the three estates of Parliament, and two are greater then one; therefore above,

Sol. The Leggs Armes and trunke of the Body are greater then the head and yet not above: nor with life without it; The argument holds for quantity but not for quality, and in truth the King is none of the three estates, but above them all, the three estates are the Lords Spirituall, the Lords Temporall, and the Commons; *Cooke* their Oracle in his Chapter of Parliaments, Folio the first.

6 Ob. In corporations the greater number of voices make all the Acts of the corporation valid; therefore so in Parliament,

Sol. By this reason the Kings assent is needlesse and to no end, and all the Acts of Parliament formerly mentioned, and law bookes have quite mistaken the matter which with unanimous voice requires the Kings assent as necessary

ſſary. Beſides the Corporations are ſo conſtituted by the Kings Charters, that the greater number of votes ſhall make their Acts valid.

The King, as King, is preſent in his Parliament as well as in all other his Courts of Juſtice, how be it he is not there, 7 *Ob.*

In his other Courts of Juſtice he hath no voice, he is none of the Judges, in the Parliament he hath, if his preſence be not neceſſary his voice is not, nor his aſſent. *Sol.*

The originall prime legiſlative power of making Lawes to bind the ſubjects and their poſterity, reſts not in the King, but in the kingdome and Parliament which repreſents it. 8 *Ob.* Soveraign power of Parliaments. 46. 47.

Maſter *Prinne* in the ſame leafe affirmes, and truly, that the Kings aſſent is generally requiſite to paſſe lawes and ratifie them, the King is the head of the kingdome and Parliament, how then can a body act without a head? *Sol.*

A major part of a Corporation binds, therefore the Major part in Parliament, and ſo of by-Lawes. 9 *Ob.*

The Corporation is ſo bound, either by the Kings Charters, or by preſcription, which ſometimes had the Kings conceſſion: but preſcription, and Law, and practiſe, alwayes left the King a negative voice. *Sol.*

The King cannot alter the Bills preſented to him by both houſes g^a. 10 *Ob.*

True but the King may refuſe them, *Sol.*

Acts of Parliament and Lawes miniſtred in the Reignes of uſurpers bind rightfull Kings. g^a. 11 *Ob.*

What is this to prove the two houſes power only, which is the queſtion. A King *de facto* muſt be obeyed by them who ſubmitted to him, and they are his Subjects by their ſubmiſſion, and not Subjects *de jure* to the true King, and ſuch being Traytors and Rebells to the regent King (having renounced the true King) when the lawfull *Sol.* 9 *Ed.* 4. 13.

lawfull Kings is restored, may be punished by him for their treason against the usurper. But heere is a King still in both cases, and the proceedings at law holds; The Judges having their patents from the being Kings, in the reignes of Kings, *de facto* or *dejure*, for all Kings are bound and sworne to observe the lawes.

12 *Ob.* A King dies without Heyre, is an infant, *non Compos mentis &c.* the two houses may establish Lawes. g°

Sol: There is no *Inter-regnum* in England, as appeares by all our books of law, and therfore the dying without Heyre is a Vaine supposition, and by their principle he is considerable in his politique capacity, which cannot die at all: The protector assisted by the Councell of the King at law, his twelve Judges, the councell of state, his Attorney, Solicitor and two Sergeants at law, his twelve Masters of the Chancery, hath in the Kings behalfe and ever had, a negative Voice; but what is this to the present question; Wee have a King of full age, of great wisdome and judgement, The power of the two houses in such a case to be over the King cannot be showne.

13 *Ob.* The King cannot dissent to publique and necessary Bills for the common good. g°

Sol. Nor ever did good King, but who shall be judge whether they be publique and necessary? The major part in either of the houses for passing of bills so pretended may be but one or two voices or very few; and perhaps of no judicious men, is it not then fitter or more agreeable to reason; that his Majestie, and Councell of State, his twelve Judges, his Sergeants, Attorny and Solicitor, twelve Masters of the Chancery should judge of the conveniency and benefit of such Bills for the publique good, rather then a minor (of which sort there may be in the houses) or a weake man, or a few, who often times carry it by making the Major part, which involves the consent of all? Let reason determine.

The

The Kings of England have beene elective; and the King by his Coronation Oath is bound to maintaine *justas leges & consuetudines quas vulgus elegerit.* g° 14 Ob.

Popery hath beene in the kingdome and therefore to continue it still will not be taken for a good argument, when things are setled for many ages; to looke back to times of confusion, is to destroy all reposse: The Act of Parliament of the first of K. *James.* Chapter the first and all our extant lawes say, that the Kings office is an heritage inhærent in the blood of Our Kings and their byrth-right. Sol.

And usurpers that come in by the consent of the people, are Kings *de facto* but not *de jure* as appeares by the acts of Parliament declaring them so. And by all our law books and the fundamentall constitution of the Land, Regall power is herditary and not elective. 1 Ed. 4. cap. 1.

For the words (*vulgus elegerit*) if *vulgus* be applied to the house of commons, they of themselves can make no laws? The Peeres were never yet termed *vulgus*, but allowing they be so called, the lawes to be made must be just and who is fit to judge thereof is before made evident. 1 H. 7.

Customes cannot referre to future time, and both are coupled, Lawes and Customes. 15 Ob:

Princes have beene deposed, and may bee by the two houses. g° Sol.

The deposers were Traytors as appeares by the resolution of all the judges of England; *Cooke* Chapter: Treason in the second part of the Institutes. And never was King deposed but in tumultuous and mad times, and by the power of Armies, and they who were to be the succeeding Kings, in the head of them, as *Edward* the third and *Henry* the fourth.

The appeale to the Parliament for errors in judgements in all Courts, is frequent. g° 16 Ob.

This is only to the house of Lords, and that is not the Paliament Sol.

Parliament : the house of Commons have nothing to doe therewith and in the house of Peeres, if a writt of error be brought to reverse any judgment. There is first a Petition to the King for the allowance thereof, and the reason of the Law in this Case is for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancery assist there, by whose advice erroneous judgments are redressed.

17 Ob. The Parliaments have determined of the rights of Kings, as in *Henry* the sixts time, and others, and Parliaments have bound the succession of Kings, as appeares by the statute of the thirteenth of Q. *Eliza*, Chapter the first and the discent of the Crowne is guided rather by a Parliamentary Title then by common law.

Sol. If this objection be true, that the Title to the Crowne is by Parliament then wee had no usurpers, for they all had Parliaments to back them, yea *Richard* the third, that Monster, All our books of law say they have the Crowne by discent, and the Statutes of the Land declare, that they have the same by inherent byrth-right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter, was made to secure Queene *Elizabeth*, against the Queene of *Scots*, then in the Kingdome, claymimg the Crowne of England, and having many adherents. And that Statute to that end affirmes no such power in the two Houses (which is the Question) but in Queene *Elizabeth*, and the two Houses, which makes against the pretence of this time.

Master *Prinne*, *fol.* 104. of his booke intituled the Parliaments supreme Power, &c. Objecting the Statute of the first of Queene *Elizabeth*, and his owne Oath, That the King is the only supreame Governour of this Realme. Answeres; The Parliament is the supreme Power, and the King supreame Governour. And yet there hee allowes him a Negative Voice, And *fol.* 107. confesseth that Acts

of

of Parliament, translated the Crowne from the right heires at Common-lawe to others who had no good Title; Then the Parliamentary Title makes not the King, so powerfull is Truth, that it escapes from a man unawares: To make a distinction betweene Supreame Governour, and Supream Power, is very strange, For who can Governe without Power?

The King assembles the Parliament by his Writt, Adjournes, Prorogues and Dissolves the Parliament, by the Lawe at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the Kings command. Where is the Supreame Power? *Vide* Speede 645. 4 *pars Inst.* 27. & 28.

The King, by his Oath, is bound to deny no man Right, much lesse his Parliament, To agree to all just and necessary Lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative Voice. 18 *Ob.*

The King is so bound as is set downe in the Objection, but who shall judge whether the Bill propoled bee just and necessary: For all that they doe propose are so pretended and carried in eyther House, sometimes by one or two voices; or some few as aforesaid, and certainly as hath beene shewn, the King, his Councell of State, his Judges, Sargeants, Attorney, Sollicitor, and twelve Masters of the Chancery can better Judge of them, then two or three or few more. *Sol.*

Master *Prinne fol.* 45. In his booke of the Parliaments intereſt to nominate Privy-Councellors, &c. calleth the opinion of the *Spencers* to divide the person of the King from his Crowne, a strange opinion, and cites *Calvins* Case, but leaves out the conclusions therein mentioned, *fol.* 11. Master *Prinne* saith there, But let this opinion be what it will: without the Kings Grace and Pardon it will goe very far, and two Acts of Parliament there mentioned *Calvins* Case 7 *pars fol.* 11.

are beyond an opinion. And in his booke of the opening of the Great Seale *fol.* 17. The Parliament hath no jurisdiction to use the Great-Seale for Pardons Generall or Particular. Where is the Supreme power?

Master *Prinnes* (opening of the Seale) *Page* 19. 19 *Ob.* saith, The Noblemen and State, the day after the funerall of King *Henry* the third (king *Edward* the first his sonne being in the holy Land) made a new Great-Seale, and Keepers of the same: And in *Henry* the sixts time, in the first yeere of his Reigne, the like was done in Parliament.

A falso, ad jus, is no good Argument, for that in *Edward* the firsts time, it was no Parliament, for King *Henry* the third was dead, which dissolved the Parliament, if called in his time, and it could bee no Parliament of *Edward* the firsts time, for no writ issued to summon a Parliament in his name, nor could issues but under that new Seale, it was so sodainly done after *Henry* the thirds death, King *Edward* the first being then in the holy-Land, it was the first yeere of his Reigne, and no Parliament was held that yeere, nor the second yeere of his Reigne, The first Parliament that was in his Reigne, was in the third yeere of his Reigne, as appeares by the Printed Acts. Also the making of that Seale was by some Lords then present, What hand had the Commons in it? Concerning the Seale made in *Henry* the sixts time, the Protector was vice-Roy according to the course of Lawe, and so the making of that Seale was by the Protector in the Kings name; and that Protector *Humphry* Duke of Gloucester, as Protector, in the Kings name, summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of *Henry* the sixt, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament. *Prinne ibid. fol.* 19. But the new Counterfeit Seale was made *Sol.*

made when the King was at Oxford, in his owne kingdom and not in the holy-Land.

Master *Prinne* in his Booke of the two Houses power to impose Taxes, restrayne Malignants against any *Habeas Corpus*, &c. saith that the Parliament is above *Magna Charta*, and *folio* 15 *ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is Cause. 20 Ob.

This Argument supposeth that they have the Kings power, which hath appeared formerly they have not. But suppose they had, *Magna Charta* contaynes many morall Lawes, which by the Lawe of the Land a Parliament cannot alter, 21. *H.* 7. 2. *Dr. & Student*, 2. *Dialogue*. For example, it saith *cap.* 18. Justice shall not be sold, dlayed nor denyed to any man, but by this Argument the Parliament may make Lawe to delay, deny, and to sell Justice, which surely is a very ill position to maintaine. Sol.

What they would have doth now by the Propositions sent to Newcastle to his Majestie appeare, whereby they would have him divest himselfe and settle in them all his kingly power by Sea and Land, and of themselves to have power, without him, to lay upon the people of this Land, what Taxes they thinke meete, to abolish the Common-prayer booke, to abolish Episcopacy, and to introduce a Church government not yet agreed, but such as they shall agree on.

His Majesty finding a prevayling party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these reasons.

(*viz.*)

FIRST, Because to alter the Government for Religion, is against the Kings Oath.

Secondly, Against their Oathes: For every of them hath sworne in this Parliament, That his Majesty is the only supreame Governour in all Causes Ecclesiasticall and over all Persons.

Thirdly, This course is against *Magna Charta*, the first Chapter and the last. *Salva sunt Episcopis omnes libertates sua*, Confirmed by thirty two Acts of Parliament, And in the two and fortieth of *Edward* the third, in the first Chapter enacts, If any Statute bee made to the contrary it shall be holden for none, and so it is for Judgements at Lawe, in the twenty fift of *Edward* the first, chapter the first and the second, The great *Charter* is declared to be the Common-lawe of the Land.

Fourthly, They indeavour to take away by their Propositions, the Governement of Bishoppes, which is as ancient as Christianity in this Land, and the booke of Common-Prayer, setled by five Acts of Parliament, and compiled by the Reformers and Martyres, and practised in the time of foure Princes.

Fiftly, These Propositions taking away from his Majesty all his power by Land and Sea, Rob him of that which all his Ancestours Kings of this Realme have enjoyed. That Enjoyment and Usage makes the Lawe, and a Right, by the same to his Majesty. They are against their owne Protestation made this Parliament (*viz.*) to maintaine his royall Person, Honour and Estate; They are against their Covenant, which doth say that they will not diminish his just Power and Greatnesse.

For these Reasons his Majesty hath left them, and as is beleeved will refuse to agree to the said Propositions, as by the Fundamentall Lawe of the Land hee may (having a Negative Voyce) to any Bills proposed.

The result of all is, upon the whole matter. That the king thus leaving of the Houses, and his denyall to passe the said Propositions, are so farre from making him a Tyrant, or not in a condition to Governe, at the present; That thereby he is rendred a Just, Magnanimous and Pious Prince, so that by this it appeares clearely to whom the Miseries of these Times are to bee imputed. The remedy for all is, an Act of Oblivion and a Generall Pardon. GOD

save the *KING.*

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*. *Aprilis*
1647.

David Jenkins.
Now prisoner in
the Tower.